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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

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4 MARK KAPATI,

5

PLAINTIFF,

6

7 -against-

Case No:  
07 CV 3782

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9 RAYMOND W. KELLY, in his official capacity as  
Commissioner of the New York City Police  
Department, and THE CITY OF NEW YORK,

10 DEFENDANTS.

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12 DATE: May 29, 2008

13 TIME: 2:15 P.M.

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16 EXAMINATION BEFORE TRIAL of a Witness,

17 RITA BIENIEWICZ, taken by the Plaintiff,

18 pursuant to Notice and to the Federal Rules of

19 Civil Procedure, held at the offices of

20 Corporation Counsel, 100 Church Street, New

21 York, New York, before a Notary Public of the

22 State of New York.

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2 A P P E A R A N C E S :

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4 LAW OFFICES of STEVEN L. KESSLER  
Attorney for Plaintiff  
5 The Chanin Building  
122 East 42nd Street  
6 New York, New York 10168  
BY: STEVEN L. KESSLER, ESQ.

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9 MICHAEL CARDOZA, ESQ.  
Corporation Counsel  
10 Attorney for the Defendants  
100 Church Street  
11 New York, New York  
BY: PHILIP S. FRANK, ESQ.  
12 DAVID HAZEN, ESQ.  
File #: 2007016236  
13 Control #: HHH02015

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2 R I T A B I E N I E W I C Z, called as a  
3 witness, having been first duly sworn by a  
4 Notary Public of the State of New York, was  
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. KESSLER:

8 Q. Please state your name for the  
9 record.

10 A. Rita Bieniewicz

11 Q. Where do you reside?

12 A. My work address is 198 East 161st  
13 Street, Bronx, New York 10451.

14 MR. HAZAN: For the record, I'm  
15 representing the witness for this  
16 deposition.

17 Q. Is that correct?

18 A. Yes.

19 Q. Good afternoon, Mr. Bieniewicz,  
20 it's nice to see you again. Have you ever  
21 been deposed before?

22 A. No.

23 Q. The way I'm going to work it is I'm  
24 going to ask you question, you answer them. You  
25 are under oath so I expect nothing but truthful

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2 Q. '07?

3 A. Yes.

4 Q. In 2006, you were handling the  
5 misdemeanor cases?

6 A. Yes.

7 Q. In preparation for today, did you  
8 review any documents?

9 A. Yes.

10 Q. What documents did you review?

11 A. I looked over the file of  
12 Mr. Kapiti.

13 Q. When you refer to the file, are  
14 those the documents that you supplied to the  
15 city pursuant to our request?

16 A. Those are the documents that I  
17 supplied. If I can look over them before --

18 Q. I'm going to have marked  
19 collectively what's been Bates stamped as --  
20 the last digit is missing. What's been Bates  
21 stamped N city 118 through New York City 128;  
22 is that correct Mr. Frank?

23 MR. FRANK: That's correct.

24 MR. KESSLER: I ask it be marked  
25 Plaintiff's Exhibit 12.

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(Whereupon, the aforementioned

3

replace was marked as Replace Exhibit

4

Replace for identification as of this

5

date by the Reporter.)

6

Q. I'm going to ask that you take a

7

look at what's been marked Plaintiff's exhibit

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12?

9

A. (PERUSING).

10

Q. Is that the file you are referring

11

to?

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A. These are documents that were

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within the file that you are referring to.

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Q. Was there anything in addition you

15

reviewed that was part of the file that was not

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-- that is not part of this packet?

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A. The white folder. I reviewed our

18

people's white folder with the notices and

19

arraignment information and the criminal

20

complaint.

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MR. HAZEN: For the record

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defendants' don't have it. Defendant's

23

-- that information is pursuant to 16050

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and we have not been able to get it

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because of the pending motion before

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2 judge Burman in this case.

3 MR. KESSLER: The complaint I have  
4 a copy of.

5 MR. HAZEN: As part of this file.

6 MR. KESSLER: No, not as part of  
7 this file.

8 MR. HAZEN: It's our position that  
9 that complaint was produced before the  
10 case was sealed as part of a different  
11 file and those documents as they are  
12 contained in the district attorney's  
13 file are sealed and that's why they are  
14 not been produced as part of the  
15 district attorney's file.

16 MR. KESSLER: I'm going to mark  
17 this as Plaintiff's 13.

18 (Whereupon, the aforementioned  
19 replace was marked as Replace Exhibit  
20 Replace for identification as of this  
21 date by the Reporter.)

22 Q. I'm happy to call him as a witness  
23 but for purposes of today, do the parties  
24 stipulate that 13 is the cover sheet copy of  
25 the cover sheet that came with among other

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2 things the ADA's file?

3 MR. FRANK: Yes.

4 Q. According to the cover sheet, it  
5 indicates that what's been produced among other  
6 things is quote ADA Bieniewicz file concerning  
7 the leased vehicle Bates stamped NYC. 118-128.  
8 It is correct that there were other items as  
9 part of the file that were not produced in the  
10 document that I'm showing you now; correct?

11 A. Yes.

12 MR. HAZAN: Again just for me the  
13 record those documents are sealed.

14 MR. KESSLER: For the record I'm  
15 going to ask for sanctions but you've  
16 made your record.

17 MR. HAZEN: For the record it would  
18 be improper for you to ask for sanctions  
19 because those documents are sealed and  
20 you have objected to us getting access  
21 to those documents.

22 Q. Other than the white folder that  
23 you referred to, the criminal court complaint  
24 and the documents before you, anything else you  
25 reviewed in preparation for coming here today?

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2           A.    I might have glanced at the DA  
3   summary write up which we staple to the white  
4   folder.   In essence it's the same as the white  
5   folder.

6           Q.    We'll call that as part of the  
7   white folder.   Anything else?

8           A.    No.

9           Q.    Did you speak to anybody about the  
10   case?

11          A.    Other than Mr. Frank and Mr. Hazen,  
12   no.

13          Q.    When did you speak to Mr. Frank and  
14   Mr. Hazen?

15          A.    I believe it was the beginning of  
16   last week.

17          Q.    When were you asked to produce your  
18   file?

19               MR. HAZEN:  Objection. I'm  
20   instructing her not to answer.

21          A.    I spoke --

22               MR. HAZEN:  I'm instructing you not  
23   to answer as to when she talked to you.  
24   You are asking contents.

25               MR. KESSLER:  You maybe

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2 Q. Other than the documents that you  
3 mentioned, so that's what was produced, the  
4 complaint that's Plaintiff's 14 and the folder,  
5 is there anything else that made up part of  
6 your file?

7 A. Motions. But I did not review  
8 them.

9 Q. Were there motions as part of this  
10 case?

11 A. Yes.

12 Q. Anything else?

13 A. Not to my recollection.

14 MR. HAZAN: Can I have moment  
15 quickly just to speak to my client.

16 MR. KESSLER: You may.

17 (Whereupon, a short recess was  
18 taken.)

19 MR. HAZEN: The witness would like  
20 to clarify an answer to a question that  
21 she previously gave.

22 THE WITNESS: I neglected to say  
23 that there was also a file police  
24 paperwork within the white folder. The  
25 exact contents I wouldn't be completely

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2           sure but it would include the OMNI for  
3           arrest complaints and possibly the chart  
4           of the police officers days off.

5           Q.   Anything else?

6           A.   I wouldn't know exactly what the  
7           police paperwork was.

8           Q.   Would there be any notes other than  
9           on the file?

10          A.   No.

11          Q.   Anything from you or the assistant  
12          who may have been handling the case in the part  
13          other than on the file?

14                   MR. HAZEN:  Objection to form.

15          A.   Are you referring to status sheets?

16          Q.   I'm referring to whatever.

17          A.   The case was on for several  
18          adjournments so there's a likelihood there were  
19          status sheets both possibly if I stood on the  
20          case my notations and if the ADA stood on the  
21          case in the part her notations.

22          Q.   Would there be any notes of yours  
23          for example, if you had a meeting with police  
24          officer involved in the case?

25                   MR. HAZEN:  Objection to form.

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2 Are we talking about when whether are or  
3 whether there would be hypothetically.

4 A. On the white folder, it's my  
5 practice to write down.

6 Q. Other than the white folder, would  
7 there be any sheets like the yellow pad I have  
8 here or something like that?

9 A. Not to my recollection.

10 Q. Let me see if I understand. You  
11 are aware that the records were sealed  
12 following the acquittal?

13 A. Yes.

14 Q. How does the sealing of the records  
15 affect the district attorney's file mainly your  
16 file that the office keeps in the office?

17 MR. HAZEN: Objection to the form.

18 You can answer to the extent you know.

19 A. Do you mean physically affect?

20 Q. Yes.

21 A. The court file and my file are kept  
22 at different places but it's my understanding  
23 that it's no longer public record and that's  
24 all I know.

25 Q. Is anything physically removed from

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2 the DA file, from your file?

3 A. No.

4 Q. Because of the sealing?

5 A. No.

6 Q. Your file remains the same way it  
7 was after the case was over; correct?

8 A. That's correct.

9 Q. Is there a notation marked on the  
10 file indicating that the record is now sealed?

11 A. No. There is a record of my  
12 closing it out and putting it in closed files.

13 Q. How would you know then if this  
14 particular record was sealed or if it was still  
15 open?

16 MR. HAZEN: You can answer to the  
17 extent you know.

18 A. In in particular case, I looked it  
19 up on our system which is called Bronx DA and  
20 it said sealed pursuant to 16050 and that's  
21 when I knew the case was sealed.

22 Q. Whether when that?

23 A. A couple of weeks ago.

24 Q. In response to this litigation?

25 A. Yes.

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2 Q. Did you have any reason to look at  
3 or check the file from the time after  
4 Mr. Kapatil's acquittal until you were contacted  
5 about this case?

6 A. No.

7 Q. Did you in fact look at the file at  
8 any time between then and now?

9 A. After the acquittal?

10 Q. Yes.

11 A. No. I just remembered one other  
12 thing that would be in the file. My trial  
13 notes.

14 Q. What would that be?

15 A. My script of the testimony. The  
16 questions, not the answers of the witness.

17 MR. HAZEN: Just to clarify the  
18 last question. The last question I  
19 think you mistakenly said from then  
20 until then. It should be until the  
21 time she found out about this case.

22 MR. KESSLER: So corrected.

23 Q. Do you know if it is proper or  
24 legal to review for any purpose let alone for  
25 this case, information that has been sealed by

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2 court order?

3 A. I don't know.

4 MR. HAZEN: Objection.

5 Q. Other than the items you mentioned,  
6 and the papers in front of you, which encompass  
7 Plaintiff's 12 and Plaintiff's 14 collectively,  
8 is there anything else that you know of that is  
9 part of the ADA's file in this case?

10 MR. HAZEN: Objection.

11 MR. KESSLER: You can answer.

12 A. Not to my recollection.

13 Q. Is there anything else you reviewed  
14 other than the items you just mentioned?

15 A. No.

16 Q. You were assigned the case in you  
17 said May 2006?

18 A. After reviewing the file, my  
19 estimation is late May or early June.

20 Q. Was it then assigned to you for the  
21 duration?

22 A. Yes.

23 Q. Do you recall if it was in fact  
24 late May or early June?

25 A. After reviewing the file, I don't